IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

WP(Crl.).No. 16 of 2004(S)

PETITIONER:

PATHUMMA, W/O. LATE ABOOBACKER HAJI,
MANKARATHODI HOUSE, KODOOR,
MALAPPURAM DISTRICT.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:
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1. THE DIRECTOR GENERAL OF POLICE,
TRIVANDRUM.

2. THE SUPERINTENDENT OF POLICE,
MALAPPURAM.

3. THE SUB INSPECTOR OF POLICE,
MALAPPURAM POLICE STATION,
MALAPPURAM DISTRICT.

4. P.V. MOOSA,
DEPUTY SUPERINTENDENT OF POLICE,
MALAPPURAM.

*ADDL.R5. K.P.VIJAYAKUMAR, S/O.GOVINDAN NAIR,
AGED 46, GOPI SADAN, THADUKKASSERY,
PALGHAT.

IS IMPLEADED AS ADDITIONAL R5 AS PER ORDER ON I.A.NO.7098/06 DT.7.2.2007.

R1 TO R3 BY GOVERNMENT PLEADER
SRI.BENNY GERVACIS
R4 BY ADVS.SMT.AYSHA YOUSEFF,
SMT.MOLLY JACOB
SRI.S.SREEKUMAR

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED FROM THE ANSARUDHEEN JUMA MASJID, VELIYANCHERY DATED 26.12.2003.

EXT.P2: TRUE COPY OF THE MEMORANDUM OF WRIT PETITION IN W.P.(C)NO.39989/203 BEFORE THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
J.M.JAMES, JJ.

W.P.(Cr).No.16 of 2004 S

Dated this the 7th day of February, 2007.

JUDGMENT

Abdul Gafoor, J.

When the habeas corpus petition came up for hearing, we noticed that the case revealed a prima facie evidence of a serious misconduct on the part of a Senior Police officer. Accordingly, we directed the District Judge, Manjeri to conduct an enquiry. The enquiry report revealed irregularities and misconduct on the part of the police officer. While proceeding with the matter, the Advocate General appeared and apprised us that if any police officer had misconducted, the Government themselves will take action. An affidavit was filed by the Director General of Police as well along with I.A.No.4327/04, which reads as follows:

> ***"As the Head of the State Police Force, it is my duty to ensure that the State Police act within the four corners of the law. If a copy of the report is handed over to me and on perusal of the same, it appears that there has been any commissions or omissions on the part of any police officers, which are not authorised by law, I will order a detailed enquiry into the matter and take appropriate steps as prescribed by law."***

2. In the light of the affidavit, we felt that the request of the Advocate General was appropriate and directed the Registry to hand over a copy of the report of the District Judge to the Advocate General for appropriate action. Later, the Government Pleader submitted that the enquiry was under way. Finally it revealed that the Government did not conduct the enquiry in the proper direction. We directed the then Chief Secretary to file an affidavit. The Chief Secretary, in his affidavit, revealed as follows:

> ***"Therefore, there has been a failure in submitting the draft charge by D.G.P and in approving the draft charge by Government in Home Department, not only about ensuring that charge should be in consonance with the report of District Judge, Manjeri, but also a failure in framing the charges as per the instructions in Kerala Manual of Disciplinary Proceedings."***

3. In the light of this, we directed the Chief Secretary to do the needful, so that the proceedings are in its proper settings and in tune with the manual of the disciplinary proceedings. Order was passed by us on 2.8.2006. It is now informed by the Government Pleader that the disciplinary action already initiated is being cancelled. The letter, in this regard, addressed by the Principal Secretary to Government to the Advocate General reads as under:

> ***"With reference to the above, I am to inform you that action is under way to cancel the***

> ***disciplinary proceedings against Shri P.V.Moosa, Deputy Superintendent of Police and Vijayakumar, Circle Inspector of Police, which were vitiated by procedural lapses as admitted by the Chief Secretary in the statement filed before the Hon'ble High Court and order a de novo inquiry in the matter. I am also to inform you that a decision/orders in the matter will be issued at the earliest.***
> ***This may be brought to the kind notice of the Hon'ble Court."***

4. In the light of this, we direct the Government to complete the proceedings against the officers concerned, at any rate, within two months from the date of receipt of a copy of this judgment. The action taken in this regard shall be reported to this court. We direct so, taking into account the plea of one among the officers that he is due to retire in the month of May, 2007.

5. The orders dated 19.1.2004, 21.1.2004, 25.3.2004, 17.11.2004, 7.4.2006 and 2.8.2006 shall form part of this judgment as appendix thereto.

Writ petition is disposed of as above.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(J.M.JAMES)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
J.M.JAMES, JJ.

W.P.(Cr).No.16 of 2004 S

JUDGMENT

7th February, 2007.